

1 cross-exam. This is voir dire.

2 MR. JOYCE: I understand.

3 JUDGE CHACHKIN: All right.

4 BY MR. JOYCE:

5 Q Mr. Peters, are you certified with professional
6 organizations as some sort of a private carrier paging expert?

7 A No.

8 Q Is private carrier paging engineering recognized as
9 an expertise by any of the professional organizations that you
10 refer to in your direct testimony?

11 A To my knowledge, no.

12 Q Do you have some special degree in private carrier
13 pager engineering?

14 A Never heard of such a degree, but I do not have one.

15 Q Are there any recognized treatises in private
16 carrier paging engineering?

17 A I don't -- are you saying are there any at all? Is
18 that what your question was?

19 Q Yes.

20 A Probably.

21 Q Can you name them for me?

22 A No.

23 Q So you haven't read them if there are any?

24 A I have not.

25 JUDGE CHACHKIN: Are you aware of any treatises on

1 --

2 MR. JOYCE: No, I'm not, Your Honor.

3 JUDGE CHACHKIN: I don't -- all right.

4 BY MR. JOYCE:

5 Q Has the FCC published engineering protocol for
6 private carrier paging engineering?

7 A No.

8 Q Have you ever installed a private carrier paging
9 station?

10 A Physically, no.

11 Q Have you ever physically connected two private
12 carrier paging terminals together?

13 A Personally, no.

14 Q Have you ever installed monitoring equipment on a
15 private carrier paging transmitter?

16 A No.

17 MR. JOYCE: Your Honor, I move to, to strike this
18 witness' testimony on the basis that he has no field or legal
19 training in the -- or practical training in the area of
20 private carrier paging.

21 MR. HARDMAN: Your Honor --

22 JUDGE CHACHKIN: He happens to be a full member of
23 the Association of Consulting Engineers. He's a registered
24 Professional Engineer. He's the President of a firm,
25 Consulting Engineers. He's represented paging clients under

1 Part 22. What, what expertise do you expect him to have? The
2 fact --

3 MR. JOYCE: He's an engineer.

4 JUDGE CHACHKIN: The fact he's not a technician,
5 that he didn't personally install a system, doesn't provide
6 him -- make him a consulting engineer?

7 MR. JOYCE: I have no objection to taking his
8 testimony as an engineer, but he's been proffered as a private
9 carrier paging expert and I object to, to that
10 characterization of his testimony, Your Honor.

11 MR. HARDMAN: Well, Your Honor, he's proffered as an
12 expert on the paging industry of which private carrier paging
13 is a, is a subcomponent. If I'm -- if I may ask --

14 JUDGE CHACHKIN: Go ahead.

15 MR. HARDMAN: -- a couple of questions?

16 BY MR. HARDMAN:

17 Q Mr. Peters, the line of questions from Mr. Joyce
18 implied some sort of subspecialty about private carrier
19 paging. To your knowledge is there any such subspecialty
20 recognized in radio frequency engineering circles?

21 A No, none at all. All of the equipment that is used
22 in RCC and other forms of paging are also used in private
23 carrier paging, so they're virtually identical.

24 Q Well, from an industry or technical standpoint is
25 there something particularly new or different about private

1 carrier paging compared to the industry, the paging industry,
2 in general?

3 A Not at all.

4 MR. HARDMAN: I submit, Your Honor, that --

5 MR. JOYCE: I haven't --

6 MR. HARDMAN: -- objections based on the alleged
7 lack of a, of a subspecialty when there is no such
8 subspecialty are not well-founded.

9 MR. JOYCE: I haven't finished with my objection
10 yet, Your Honor.

11 JUDGE CHACHKIN: Well, you moved to strike his
12 testimony.

13 MR. JOYCE: Well, you've now opened it to, to
14 further voir dire.

15 JUDGE CHACHKIN: Go ahead.

16 MR. JOYCE: According to McCormick on Evidence, Your
17 Honor, opinion evidence is inadmissible if the presiding
18 officer believes that the state of the pertinent knowledge or
19 scientific knowledge does not permit a reasonable opinion to
20 be asserted by, by the expert. Now, he has testified under
21 voir dire that the FCC does not have private carrier paging
22 protocol and he's never even read a treatise on private
23 carrier paging, so I submit that the state of the pertinent
24 knowledge does not allow expert opinions on private carrier
25 paging matters.

1 MR. HARDMAN: Your Honor, it's never been --

2 MR. JOYCE: He's also --

3 MR. HARDMAN: -- established that there is such a
4 treatise for him to read.

5 MR. JOYCE: I'm not finished, Mr. Hardman. I have
6 not interrupted you. The courts have also held that expertise
7 must be derived both from reading in the field and from actual
8 practice in the field. Now, he has less expertise in the
9 field than RAM's witnesses that have been, been called who
10 have testified to actually having installed private carrier
11 paging monitoring equipment, having tied terminals together,
12 and he has testified that he has not read any treatises about
13 private carrier paging. So, although I grant you he probably
14 is a very good engineer, he does not qualify as a private
15 carrier paging expert.

16 MR. HARDMAN: Your Honor, first of all, as I said a
17 moment ago, he's been proffered as an expert in the paging
18 industry of which private carrier paging is one component but,
19 more importantly here, there is absolutely no evidence -- I
20 know of no such subspecialty. Certainly Mr. Joyce has not
21 offered any evidence that there is some sort of subspecialty
22 related to private carrier paging engineering as opposed to
23 just paging engineering in general or anything about -- that's
24 unusual about private carrier paging that qualifies it as some
25 subspecialty for certification purposes.

1 JUDGE CHACHKIN: Do you argue he's not an expert in
2 the paging industry?

3 MR. JOYCE: No, I do not, Your Honor.

4 JUDGE CHACHKIN: Well, the mere fact he --

5 MR. JOYCE: Well, what is the relevance to a private
6 carrier paging --

7 JUDGE CHACHKIN: Well, apparently his argument,
8 there's not much difference between RCC or private paging
9 except the Commission has allocated different frequencies for,
10 for each purpose, but basically they use the same equipment
11 and basically they serve the same purpose.

12 MR. JOYCE: Well, the presiding officer can make
13 those distinctions without an expert, Your Honor. That is a
14 job for the FCC to do, not for somebody who does not qualify
15 as a private carrier paging expert.

16 MR. HARDMAN: I would also point out, Your Honor,
17 that this, this is a situation in which a company, namely
18 Capitol, which is a long standing radio common carrier,
19 decided to get into the private carrier paging business and
20 what is at issue in this case is the reasonableness and the
21 bona fides of its intentions in doing so, among other things,
22 certainly the reasonableness of how it proceeded, what it did
23 and so forth. Now, Mr. Peters in his prepared testimony has
24 stated that this is a common situation he has dealt with among
25 his clientele and what they've done and he has offered

1 | opinions based on his observation and knowledge of the
2 | industry about whether these actions were reasonable or not
3 | under the circumstances. And that kind of opinion in terms of
4 | evaluating what this company did as an RCC that wanted to get
5 | into the PCP business is certainly probative of the issues in
6 | this case that the Government has brought.

7 | MR. JOYCE: It's by no means probative. He's
8 | testified that there are no standards, so he's nothing more
9 | than a hired gun who's been retained by Capitol to give an
10 | opinion as to whether or not under these circumstances they
11 | did not cause interference which is a delegation of the
12 | presiding officer's responsibilities. If there were accepted
13 | standards for what is acceptable sharing of a private carrier
14 | paging frequency, if there was a treatise on point, if we had
15 | some objectivity from this expert, it would be proper, but it
16 | is not. We do not have any of those things. He is not
17 | qualified as a private carrier paging expert. His opinions
18 | are obviously subjective and biased and it is not going to
19 | help the presiding officer to rule on the ultimate issues of
20 | fact. He cannot point to one authority and say this is
21 | acceptable interference and this is not.

22 | MR. HARDMAN: Your Honor, the --

23 | MR. JOYCE: And I would move to strike -- and I've
24 | prepared a motion and it's directly on point, Your Honor. I'd
25 | be happy to, to present it to you.

1 MR. HARDMAN: Your Honor, the evidence shows in this
2 case that a number of these incidents in which there was
3 alleged to have been interference caused by Capitol, Capitol
4 never knew about. This has, this has come aground long after
5 the fact. Now, there are only two ways that you can try
6 certain issues. You can have fact evidence and you can have
7 opinion evidence and because Capitol never had any opportunity
8 at the time to investigate the facts and come up with fact
9 witnesses, it would certainly be extremely prejudicial to
10 prohibit it from offering the opinion of a qualified --
11 there's no question this man is a qualified paging expert as
12 to, you know, what -- among other things, what likely happened
13 or what the possible explanations are. To prohibit opinion
14 testimony from someone who is as knowledgeable in the paging
15 industry as this man is would effectively prevent Capitol from
16 being able to introduce any evidence on some of these claims
17 that it never knew about until the Hearing Designation Order
18 was issued.

19 MR. JOYCE: That's preposterous.

20 MR. HARDMAN: We have -- Your Honor, we have the
21 July 1991 allegations. Capitol never knew about them. We
22 have the August 1992 allegations. Capitol never knew about
23 them until the --

24 MR. JOYCE: You made an earlier request, Mr.
25 Hardman.

1 MR. HARDMAN: And when was the -- request granted?

2 MR. JOYCE: Long before you retained Mr. Peters.

3 MR. HARDMAN: That's right, December 1992, long
4 after these incidents were alleged to have occurred and
5 Capitol could have done anything to find out what was going
6 on.

7 MR. JOYCE: Anything short of hiring a hired gun to
8 tell you --

9 MR. HARDMAN: Your Honor --

10 MR. JOYCE: -- what the, what the presiding judge is
11 supposed to do in this case which is determine whether or not
12 your acts -- your witness' acts which we're here to testify
13 constituted harmful interference or not.

14 MR. HARDMAN: Your Honor, the Government and RAM
15 will have ample opportunity to test this man, to cross-examine
16 him and see if his opinions are well-founded in fact. It
17 seems to me what the -- what RAM is arguing is not whether the
18 testimony is proper, but whether it's at -- the most you can
19 get a credit for is saying as to whether -- how much weight it
20 might carry. That doesn't speak to admissibility under any
21 circumstances and -- but the bottom line is RAM just doesn't
22 want any testimony at all.

23 MR. JOYCE: Expert testimony on the ultimate issues
24 of fact as to whether or not there have been violations of
25 Title III of the Communications Act are completely

1 | inappropriate in this case, Your Honor.

2 | MR. HARDMAN: Your Honor, there are 15 pages, there
3 | are 15 pages that Mr. Peters prepared. I -- frankly, I don't
4 | see anything there that addresses ultimate issues in this
5 | case.

6 | MR. JOYCE: You just asked him again on the stand to
7 | determine whether or not the testimony you've heard is
8 | consistent with a finding of harmful interference.

9 | MR. HARDMAN: Yeah. The qualified -- this, this --

10 | JUDGE CHACHKIN: Well, I've heard enough. I'm going
11 | to overrule your objection. I certainly think -- I disagree
12 | with you that -- you've conceded, Mr. Joyce, that he is an
13 | expert in the paging industry. No evidence has been submitted
14 | by you showing that there's a -- to have an expertise in a
15 | subspecialty like the private paging industry or that there's
16 | any significant difference between the private paging industry
17 | and the use of paging by common carriers. Under those
18 | circumstances, I don't see the fact that he's not an expert in
19 | a subspecialty for which there is no significant different in
20 | any way has a bearing on whether or not he can testify in this
21 | area. And certainly to the extent that he has opinion based
22 | on his expertise on, on paging in general and shared, and
23 | shared paging and, and the areas of interference I think it's
24 | useful for the record. Now, you can object if you wish on the
25 | grounds of relevancy to portions of his testimony, and I

1 | assume the Bureau is also going to object, but the Bureau, as
2 | far as I know, has not contested his expertise in the paging
3 | industry.

4 | MS. FOELAK: That's correct, Your Honor. We have no
5 | objections to his qualifications to give the -- opinions here.
6 | Of course, Mr. Hardman indicated he has further questions
7 | which possibly we could object to. They might be --

8 | JUDGE CHACHKIN: Now, as far as any objections to
9 | the exhibit itself, the Bureau has some objections apparently.
10 | Is that correct?

11 | MS. FOELAK: Yes.

12 | JUDGE CHACHKIN: What are the Bureau's objections?

13 | MS. FOELAK: On page 1, Your Honor, right after the
14 | subheading Introduction --

15 | JUDGE CHACHKIN: Yes.

16 | MS. FOELAK: -- the first paragraph, there appears
17 | to be argumentative, conclusory and --

18 | JUDGE CHACHKIN: Which page now?

19 | MS. FOELAK: Page 1 of CAP 23.

20 | JUDGE CHACHKIN: Where it says, "This case?"

21 | MS. FOELAK: That's correct. And it addresses the
22 | ultimate issue which is for Your Honor to decide.

23 | MR. HARDMAN: Your Honor, this speaks to a technical
24 | justification for a significant forfeiture and I think that
25 | the basis for that is explained in his subsequent testimony,

1 that -- I mean, at the risk of characterizing it, it's
2 basically saying that the -- what happened here was blown way
3 out of proportion from a -- what happened here from a
4 technical standpoint was blown way out of proportion compared
5 to what happened in the industry on a daily basis. Now,
6 that's his opinion and he can certainly be examined on that,
7 but I would --

8 JUDGE CHACHKIN: Well, I'll overrule the objection.
9 That's his opinion, his expert opinion, and you certainly can
10 question him on it, whether it's the basis for it or not.
11 I'll overrule that objection.

12 JUDGE CHACHKIN: And he's made clear he's talking
13 about a technical justification. He's not talking anything
14 about a final legal justification. He's talking from his
15 expertise as an, as an engineer.

16 MS. FOELAK: Next, on page 4, the fourth paragraph,
17 last sentence starting, "However," is irrelevant and
18 conclusory.

19 MR. HARDMAN: I'm sorry. What is the reference?

20 MS. FOELAK: It's right above the subheading
21 Frequency and Propagation Considerations.

22 JUDGE CHACHKIN: Well, as far as this paragraph this
23 has nothing to do with his technical expertise. Your
24 objection is to, "My association has always been -- however, I
25 do have respect." That sentence will be stricken. It has

1 nothing to do with his technical expertise. Any other
2 objection?

3 MS. FOELAK: Yes. On page 7, the last sentence of
4 the first full paragraph which states, "RAM's reaction," is
5 speculative.

6 MR. HARDMAN: Your Honor, I absolutely disagree with
7 that. This -- one of his --

8 JUDGE CHACHKIN: Well, I'll overrule the objection.
9 That deals with his technical expertise and I'll overrule that
10 objection.

11 MS. FOELAK: On page 11, at the top of the page, the
12 sentence that commences, "I conclude" --

13 JUDGE CHACHKIN: Where is this now?

14 MS. FOELAK: Page 11, at the top of the page, the
15 last two sentences of that partial paragraph starting, "I
16 conclude." Once again we must object on the basis of
17 irrelevance.

18 JUDGE CHACHKIN: Why is it irrelevant.

19 MS. FOELAK: Because it's -- it speaks to RAM and a
20 comparison between RAM and Capitol --

21 JUDGE CHACHKIN: Well, don't think you --

22 MS. FOELAK: -- and this considered -- concerns
23 Capitol.

24 JUDGE CHACHKIN: Don't you think that has something
25 to do with the evidence in this case? Is there justification

1 for, justification for the revocation sought here if, in fact,
2 this is a true statement, that RAM, RAM was responsible for 90
3 percent of the interference and Capitol for 10 percent?

4 MR. JOYCE: There's no --

5 JUDGE CHACHKIN: Doesn't that raise a question as to
6 -- well, I don't know if it's true or not, but if it's true
7 doesn't it raise a question as to the appropriateness of the
8 actions taken against Capitol?

9 MS. FOELAK: No, Your Honor. There are Commission
10 cases on that point.

11 JUDGE CHACHKIN: In a situation where they're both
12 involved in the same transaction?

13 MR. HARDMAN: Your Honor, perhaps I could --

14 MS. FOELAK: Yes, Your Honor.

15 JUDGE CHACHKIN: What cases do you have in mind?

16 MS. FOELAK: With Your Honor's indulgence, I --

17 JUDGE CHACHKIN: Yes.

18 MS. FOELAK: -- have them --

19 JUDGE CHACHKIN: All right.

20 MS. FOELAK: -- down here. I --

21 MR. HARDMAN: Your Honor, if, if you would also
22 refer to the preceding sentence? What this statement
23 buttresses is the witness' opinion that, in fact, Capitol's
24 monitor, off-the-air monitor, was better placed than RAM's,
25 and certainly there's an issue as to the efficacy of the -- of

1 Capitol's off-the-air monitoring. Now, if the Government or
2 RAM has any questions about the derivation of the 90 percent,
3 you know, they're certainly free to ask the witness.

4 MR. JOYCE: There's also no foundation for this
5 statement, Your Honor. I don't --

6 JUDGE CHACHKIN: Well, I assume you'll question him
7 on it, whether there's a foundation for it or not.

8 MR. JOYCE: Well, we're talking about objections
9 right now.

10 JUDGE CHACHKIN: Well --

11 MR. JOYCE: Mr. Hardman has made vociferous
12 objections to questions on the basis of an improper foundation
13 to which you've ruled in his favor, so I'm making a similar
14 objection here.

15 JUDGE CHACHKIN: I permitted you to establish a
16 foundation. If this statement -- there's no basis for this
17 statement, you can move to strike it if the witness can't back
18 it up.

19 MS. FOELAK: Your Honor, I was not able to lay my
20 hands on the exact citations. There's a Smith case of which
21 the Review Board opinion is at 102 FCC 2nd and others. If I
22 could provide Your Honor and everyone else --

23 JUDGE CHACHKIN: Well, what was the, what was the
24 --

25 MS. FOELAK: The point, though, was that violations

1 | by one licensee do not excuse the violations of another.

2 | JUDGE CHACHKIN: I understand it, but I assume all
3 | those cases dealt with a situation of disparate treatment
4 | between two completely different transactions. You have here
5 | the unusual situation where RAM is making accusations against
6 | Capitol and Capitol is cited for violation and is charged in
7 | the order here. If the question is, in fact, that RAM's
8 | violations were even more serious than Capitol's, then it
9 | seems to me a question is raised as the appropriate of, of any
10 | actions taken against Capitol.

11 | MS. FOELAK: Well, perhaps --

12 | JUDGE CHACHKIN: Now, if you could show me a case
13 | where you had a situation where you had two persons who have
14 | violated the Commission's rules in the same transaction and
15 | only one was charged, I'd like to see it.

16 | MS. FOELAK: Well, I will provide Your Honor will
17 | these case citations.

18 | JUDGE CHACHKIN: But I'm aware of cases where the
19 | Commission said one set of facts may have nothing to do with
20 | another set of facts. But here we have the same set of facts
21 | and, therefore, I think it does have a bearing. But, in any
22 | event, you could question him about, about the -- whether
23 | there's a foundation, there's a basis, for his statement. But
24 | I thought there had been evidence in the record of which the
25 | inspectors themselves said in the report, did they not, that

1 | RAM was guilty of more interference than, than Capitol was?

2 | MR. HARDMAN: Your Honor --

3 | JUDGE CHACHKIN: Isn't that in evidence? The Bureau
4 | put it in evidence themselves.

5 | MR. HARDMAN: Well, the Bureau didn't, but that was
6 | the witness -- Walker's testimony in response to my question
7 | to him.

8 | JUDGE CHACHKIN: I thought that was in Mr. Walker's
9 | report also to the Bureau which is included in the Bureau's
10 | exhibits?

11 | MR. HARDMAN: Well, there is a statement that both
12 | parties, you know, had transmissions that were deemed capable
13 | of causing harmful interference and it was because of some of
14 | those statements that I asked the witness about -- and I
15 | forget which way I asked --

16 | JUDGE CHACHKIN: Well, I thought it went beyond
17 | that. I thought Mr. Walker's statement itself --

18 | MR. HARDMAN: Well, you may be right.

19 | JUDGE CHACHKIN: -- made a statement to the Bureau
20 | that there was more interference caused by RAM than there was
21 | by Capitol, and I think it's in the Bureau's own exhibits.

22 | MS. FOELAK: With Your Honor's indulgence and, of
23 | course, Mr. Hardman's exhibit, Capitol 25, is a copy of the
24 | sanction that the Commission applied against RAM and the
25 | explanation of its reasons for disparate treatment. Also, I

1 | have now laid my hands on the list of citations.

2 | JUDGE CHACHKIN: Yes. Any similar facts to this
3 | case?

4 | MS. FOELAK: Well, of course -- well, that would be
5 | for Your Honor to judge. There's a Smith case of which the
6 | Review Board decision is at 102 FCC 2nd 258 which was affirmed
7 | by the Commission at 1 FCC Record 594.

8 | MR. HARDMAN: I'm sorry. Could you repeat that,
9 | please?

10 | MS. FOELAK: 102 FCC 2nd 258 Review Board, affirmed
11 | by the Commission 1 FCC Record 594.

12 | MR. HARDMAN: Thank you.

13 | MS. FOELAK: Then there was the Fadden case at 75
14 | FCC 2nd 212, the holding of which was assuming that there were
15 | violations by others, this does not justify retaliation and --

16 | MR. HARDMAN: I'd like that case in the record.

17 | MS. FOELAK: And perceived wrongdoing by others does
18 | not justify intentional interference of which there's two or
19 | three -- there's the Gilbert case of which the Review Board
20 | decision is 92 FCC 2nd 126 and the ID is in the same place,
21 | the Armstrong case, 92 FCC 2nd 491 at 501 is the ID and the
22 | Review Board decision is at --

23 | JUDGE CHACHKIN: Well, it may very well be that may
24 | be the ultimate determination and arguments could be made at
25 | the time of writing findings, but all we're dealing with are

1 | what the facts are and that's where we're here now, at the
2 | fact finding stage, and I'm not at this stage willing to
3 | preclude testimony as to what exactly happened here.

4 | MS. FOELAK: Yes, Your Honor. Lower down on page
5 | 11, the last line, the word "inordinate" --

6 | JUDGE CHACHKIN: Where is this now?

7 | MS. FOELAK: The bottom of page 11, the last line.
8 | the word "inordinate" is conclusory and calls for a legal
9 | conclusion.

10 | JUDGE CHACHKIN: I'll strike the word "inordinate."

11 | MS. FOELAK: Next, on page 12, I understand Your
12 | Honor has already, you know, just ruled on this point, but the
13 | -- all the material in the first paragraph on page 12 is more
14 | or less a repeat of the matter that Your Honor overruled my
15 | objection to, but we merely want to renew it, just to make a
16 | continuing objection.

17 | JUDGE CHACHKIN: Well, if it deals with the
18 | technical competence of this witness, I'll permit it. If it
19 | strays to other matters of which the witness doesn't have any
20 | particular competence, then I'll strike it, but this appears
21 | to deal with the, the technical competence of the witness
22 | explaining how these things work under a shared channel
23 | situation, how it should work under a shared channel
24 | situation.

25 | MS. FOELAK: And on page 13, the last sentence at

1 the bottom, appears argumentative and speculative.

2 JUDGE CHACHKIN: Where is that?

3 MS. FOELAK: It's at the bottom of page 13, the last
4 sentence starting, "In this proceeding."

5 MR. HARDMAN: Your Honor, again, this is a witness'
6 opinion about the -- it goes to the reasonableness of what
7 Capitol did -- his opinion as to the reasonableness of what
8 Capitol did under the circumstances in light of the fact it
9 was from the get-go an open and hostile and continuing attack
10 on everything Capitol did and some things that it didn't do.

11 JUDGE CHACHKIN: I'll overrule the objection.

12 MS. FOELAK: Finally, all the material under the
13 subheading Why Does This Case Exist At All is argumentative
14 and goes to the ultimate issue which is for Your Honor to
15 decide.

16 JUDGE CHACHKIN: All right. I will strike the
17 sentence, "I especially do not understand why it became a
18 Revocation proceeding." The next sentence seems to me deals
19 with his technical competence as whether Capitol did the right
20 things or did the wrong things. I'll permit that. With that
21 portion stricken, the remainder of the paragraph will remain
22 because, again, it deals with his technical competence as to
23 whether Capitol acted properly in establishing its system and
24 monitoring it.

25 MS. FOELAK: When Your Honor said paragraph, did you

1 mean the entire subheading under Why Does This Case Exist?

2 JUDGE CHACHKIN: No. I just meant the one sentence.

3 He doesn't understand why it became --

4 MS. FOELAK: Oh, I'm sorry.

5 JUDGE CHACHKIN: -- a Revocation proceeding. The
6 first sentence says --

7 MS. FOELAK: Just to be clear, our objection went to
8 the next paragraph --

9 JUDGE CHACHKIN: Well, I will strike the first
10 sentence and the second sentence and I will leave in the one
11 sentence, "It appears to me that Capitol did everything by the
12 book and, for the most part, correctly." That sentence will
13 remain. The first two sentences will be stricken. Now, if
14 there's any other portions there which are outside his
15 technical competence, I'm prepared to listen to any
16 objections.

17 MS. FOELAK: Okay. We would make the same, the same
18 objection to the next paragraph which starts, "RAM appears to
19 have been concerned."

20 JUDGE CHACHKIN: No. I'll overrule your objection
21 to that sentence. It deals with the question of interference.

22 MS. FOELAK: And the last sentence in that
23 paragraph, "It seems that RAM's," again appears to be
24 argumentative and going to the ultimate issue.

25 JUDGE CHACHKIN: What's that?

1 MS. FOELAK: Oh, I'm sorry. I didn't mean -- I
2 meant the second to the last sentence.

3 JUDGE CHACHKIN: Which sentence is that?

4 MS. FOELAK: "It appears RAM's frequent protests and
5 allegations concerning Capitol prompted the FCC field
6 inspection which did not turn up any serious interference."

7 JUDGE CHACHKIN: Well, there's no question the
8 record establishes why the FCC conducted its inspection.
9 That's a -- seems to me a factual statement.

10 MS. FOELAK: But whether it turned up any serious
11 interference is for Your Honor to decide.

12 MR. HARDMAN: Your Honor, this witness can certainly
13 opine as to whether the --

14 JUDGE CHACHKIN: Again, the witness can be
15 questioned as to whether what was turned up was serious or
16 not, the interference. He -- as a technical expert, in his
17 judgment he doesn't believe that there was serious
18 interference and you can question him about that.

19 MS. FOELAK: Next, in the first sentence on the next
20 paragraph, "This case appears to be in opposition to
21 traditional FCC practices of pro-competition," again appears
22 irrelevant and argumentative.

23 MR. HARDMAN: Well, again, if the -- if this case
24 -- the Government position in this case is inconsistent with
25 its traditional regulatory policies, why isn't that fair to be

1 | pointed out by this witness who certainly knows about that?

2 | JUDGE CHACHKIN: Well, if the witness has knowledge
3 | of the industry and what the FCC has done in this industry in
4 | terms of promoting shared -- channel sharing, this is his
5 | professional judgment as to what normally goes on in the area
6 | of channel sharing. I'll overrule the objection. You can
7 | question him on it. If he doesn't have a basis for it, you
8 | can move to strike.

9 | MS. FOELAK: And, finally, the last -- on page 15,
10 | the last clause in the last -- in the sentence at the top of
11 | the page, "If the FCC had not intervened," etc. Once, again,
12 | it appears argumentative.

13 | JUDGE CHACHKIN: Let's see. Where is that?

14 | MS. FOELAK: "If RAM had genuinely channel shared
15 | and the FCC had not intervened, there is no doubt Capitol
16 | could have proceeded."

17 | JUDGE CHACHKIN: I'll strike, I'll strike that
18 | sentence. All right. Any other objections to this material?

19 | MS. FOELAK: That's all of our objections.

20 | JUDGE CHACHKIN: Mr. Joyce, have any objections?

21 | MR. JOYCE: I have a standing objection to the --

22 | JUDGE CHACHKIN: I understand that. Capitol Exhibit
23 | 23 as modified by rulings is received.

24 | (Whereupon, the document previously
25 | marked for identification as Capitol

1 Exhibit No. 23 was received into
2 evidence.)

3 JUDGE CHACHKIN: Do you have some further questions
4 of this witness?

5 MR. HARDMAN: Yes, Your Honor.

6 BY MR. HARDMAN:

7 Q Mr. Peters, before we turn to the testimony in this
8 case that you have heard, let me ask you this. Are you
9 familiar with the so-called guard-band RCC systems in
10 metropolitan areas around the country?

11 A Yes, I am.

12 Q And could you explain how in a number of markets
13 those systems are operated?

14 A Do you mean from beginning to end? It's a long
15 story.

16 Q Well, let's try not to go into long stories, but
17 insofar as relevant to this case, are those systems typically
18 operated by a single carrier in a metropolitan area?

19 A Oh, yes. They offer wide area signalling. In fact,
20 one of my clients has a system running from north of Boston to
21 south of Washington --

22 Q Okay.

23 A -- in a continuous system. All right. And --

24 MR. JOYCE: What is the relevance, Your Honor? If
25 Mr. Hardman can explain I won't have an objection on

1 relevancy.

2 MR. HARDMAN: Well, the origin of the RCC system on
3 the guard-band frequencies in the major metropolitan areas
4 were shared systems and what I wanted to demonstrate was the
5 experience that this man has with the industry in sharing and
6 have him testify as to whether these are similar types of
7 technical and operational issues as presented by sharing on
8 PCP.

9 MR. JOYCE: You've already got him qualified as an
10 expert. Do we really need to go over this?

11 MR. HARDMAN: Well, the -- on voir dire the
12 objection was raised --

13 MR. JOYCE: I've been overruled, Mr. Hardman.

14 MR. HARDMAN: Well, but the -- if there was a stone
15 left unturned about the man's qualifications on sharing, I'd
16 like the record to reflect that this is not something, you
17 know, new or different.

18 JUDGE CHACHKIN: Go ahead, Mr. Hardman.

19 MR. HARDMAN: Thank you.

20 BY MR. HARDMAN:

21 Q Do you recall how the, the guard-band paging systems
22 in the metropolitan areas originated?

23 A Yes.

24 Q All right. And could you explain to the Court how
25 that succinctly, please -- how that happened?